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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,726	09/07/2005	Anthony Khouri	061300-0718	9944
26371 7590 10/08/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306				
EXAMINER				
SORKIN, DAVID L.				
ART UNIT		PAPER NUMBER		
1797				
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10/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/516,726

Applicant(s)

KHOURI ET AL.

Examiner

DAVID L. SORKIN

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-42 and 44-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. As amended claims 26-32 are now directed to a previously non-elected method of making. Claims 1-34 are withdrawn from consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 45-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is lack of antecedent basis for "The drum".

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 35-42 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The new limitation "non-metallic helical wall" is considered new matter because the genus, although polymeric materials are described, this does not constitute a description of the full scope of the genus "non-metallic".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 35, 41 and 44-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Helmy (US 5,178,457). Regarding claim 35, Helmy ('457) discloses a mixing drum comprising a first non-metallic helical element (for example, a first segment of 14, as seen in Fig. 1; see also col. 3, lines 35 "segmented"); and as second non-metallic helical element (for example, a second segment of 14) joined to the first helical element, wherein the first helical element and the second helical element form a substantially continuous circumferential layer extending about a longitudinal axis to form an interior of the drum (see Fig. 1). Regarding claim 41, a second substantially continuous layer (16) extends across the junction of the first and second elements. Regarding claim 44, Helmy ('457) discloses an element (14) comprising a helical polymeric shell (21) and a polymeric blade (17,19) integrally formed with and extending from the shell.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helmy (US 5,178,457) in view of Rogers WO 01/26871. The drum of Helmy was discussed above with regard to claim 41. The second layer is not disclosed to be a fiber reinforced elastomer. Rogers teaches a drum layer of fiber reinforced elastomer (see

page 8, lines 8-15). It would have been obvious to one of ordinary skill in the art to have made the layer of fiber reinforce elastomer to prolong life and reduce weight as taught by Rogers at page 5, lines 4-11.

10. Claims 35, 37, 38, 40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albers (US 4,391,108). Regarding claim 35, Albers ('108) discloses a drum comprising a first helical element (1) ; and a second helical element (2) joined to the first helical element, wherein the first and second helical elements form a substantially continuous layer circumferentially extending about a longitudinal axis of the drum (see Fig. 9). Non-metallic material is not disclosed. It would have been obvious to one of ordinary skill in the art to have made the drum of a polymeric material to reduce weight, lower cost and/or to prevent corrosion. Regarding claim 37, the first helical element includes a blade (15). Regarding claim 38, the second helical element includes a blade (15). Regarding claim 40, a reinforcing member is within the tip of the blade (see Fig. 6). Regarding claim 43, the first helical element and the second helical element form an interior of the drum (see Fig. 9).

Response to Arguments

11. Applicant argues regarding Helmy that "fin 14 does not itself form the inside wall 16 of the drum". However, claim 35 merely requires that the first and second helical wall "form an interior of the drum", not every interior surface of the drum.

12. Applicant argues that the drum of Albers is not for concrete mixing, however, the manner in which the drum is intended to be used is no germane to the patentability of the drum itself.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DAVID L. SORKIN** whose telephone number is (571)272-1148. The examiner can normally be reached on **Mon.-Fri. 7:30AM-4:00PM**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Walter D. Griffin** can be reached on **571-272-1447**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1797